IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.09.2007

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.983 of 2007

Kannammal .. Appellant

-Vs-

1.Ayyanan
2.Narayanan
3.Kuppusamy
4.Arumugam
5.Kittan .. Respondents

APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree, dated 16.12.2006, made in A.S.No.21 of 2005 on the file of the Principal Subordinate Judge, Gopichettipalayam, confirming the judgment and decree dated 13.4.2006 made in O.S.No.389 of 2004 on the file of the District Munsif, Sathyamangalam.

For Appellant : Mr.M.S.Velusamy

J U D G M E N T

The unsuccessful plaintiff in O.S.No.389 of 2004 on the file of the District Munsif Court, Sathyamangalam, who lost the first appeal in A.S.No.21 of 2005 on the file of the Principal Subordinate Court, Gopichettipalayam has filed the above second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The case of the plaintiff is as follows:

The first defendant is the brother of the plaintiff and the defendants 2 to 5 are the children of the first defendant; the plaintiff has another brother by name Kodiyan and three other brothers died after their marriage; the suit property originally belonged to the plaintiff's mother and in a family arrangement, the same was allotted to the plaintiff in 1970; the plaintiff is in possession of the suit property for the past 34 years by paying kist. The defendants are not willing to abide by the family arrangement. They are only entitled for 1/6th share in the suit

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property, but, the defendants are trying to encroach into the entire property. Hence the suit.

4. The suit was contested by the defendants inter alia contending as follows:

The suit property has not been properly described in the plaint schedule; Survey No.5/1B measuring to an extent of 1.61 hectares belongs to the first defendant; the first defendant's wife name is Karuppayee and the name of the plaintiff's mother is also Karuppayee and taking advantage of the similarity in the name, the plaintiff is making a false claim towards the suit property; the family arrangement pleaded by the plaintiff is not true; in 1970 the plaintiff was only 16 years old and there was no family arrangement as pleaded by the plaintiff; the claim of the plaintiff that she was in possession of the suit property for 34 years is false; the alleged trespass by the defendant is false; the plaintiff is not in possession of the entire suit property whereas the first defendant is in possession of the same; the first defendant has been issued with Patta No.424 and the first defendant is paying the kist; there is no cause of action for the suit and on the above said pleadings, the defendants prayed for dismissal of the suit.

5. After framing appropriate issues, the suit was taken up for trial and during trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and one Adaikan was examined as P.W.2, but, as he did not subject himself for cross-examination, his evidence has not been taken into consideration and on the side of the plaintiff, Exhibits A1 to A11 were marked. On the side of the defendants, first defendant has been examined as D.W.1 and one Kuppusamy has been examined as D.W.2 and Exhibits B1 to B.4 have been marked. The Trial Court on a careful consideration of the oral and documentary evidence adduced in the case, held that the plaintiff is not in possession of the suit property and dismissed the suit. Being aggrieved by that, the appellant has filed an appeal in A.S.No.21 of 2005 on the file of the Principal Subordinate Court, Gobichettipalayam. The lower Appellate Court also on an independent consideration of the evidence on record and the reasoning of the trial court agreed with the findings of the trial court and dismissed the appeal. Being aggrieved by that, the appellant is before this Court in the above second appeal.

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6. Heard Mr.M.S.Velusamy, learned counsel for the appellant.

7. In the memorandum of second appeal the following questions of law have been framed as substantial questions of law:-

> "1. Whether the Courts below are right in considering the Exhibits A1 to A11 in a perspective manner?

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2. Whether the Courts below are right in saying that Ex.A.3 is not relating to the suit property?

3. Whether the reason for rejecting the Ex.A.3 by the Courts below are correct in law?

4. Whether the Courts below is correct in rejecting the Ex.A.1 to Ex.A.11, which proved the absolute possession and enjoyment of the appellant?

5. Whether the non-mentioning of the boundaries of the suit property is having any relevance over the issue of the identity, when the appellant had properly and correctly proved the identity of the suit property?

8. The learned counsel appearing for the appellant submitted that the Courts below have not properly considered the evidence on record; the Courts below are not right in rejecting the Ex.A.3 Patta issued in the name of the plaintiff and six others. The learned counsel further submitted that in Ex.A.3, the names of the defendants are not mentioned. Except the above said submission, no other submission has been made.

9. I have carefully considered the submissions made by the learned counsel for the appellant and perused the materials available on record and the judgments of the Courts below.

10. The Trial Court has pointed out that the suit property has not been properly described by the plaintiff in Ex.A.1 and in Ex.A.1 not only the name of the Karuppayee is mentioned, the names of three others are also mentioned. Similarly, in Ex.A.3 patta also, besides the name of the plaintiff, the names of seven other persons have been mentioned and on that basis, the Trial Court has observed that the patta in respect of the suit property has not been issued in the name of the plaintiff alone. On perusal of Ex.A4 to A.9, the Trial Court has pointed out that in the said documents, the name of the plaintiff's brother Kodiyan alone is mentioned and the name of the plaintiff is not mentioned. In Ex.A.10 Adangal also besides the name of the plaintiff, the names of others have also been mentioned. The Trial Court has rightly pointed out that the Revenue Records cannot be considered to be a title deeds. The Trial Court on a consideration of a oral and documentary evidence adduced on the side of the plaintiff has recorded a finding that the plaintiff has not proved her case that she is in possession of the suit property right from 1970. Since Ex.A.11 Kist Receipt has been issued after filing of the suit, no importance has been attached to the same. The Trial Court has pointed out that it is the specific case of the plaintiff that she claims 1/6th share in the suit property and as such, the

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case that she is in exclusive possession of the suit property for 34 years cannot be true.

11. The Lower Appellate Court has independently considered the evidence and also the reasonings of the Trial Court. The Lower Appellate Court has pointed out that the plaintiff claims to be in possession of the suit property for 34 years and now the age of the plaintiff is 50 years and as such, if the claim of the plaintiff is to be accepted, she should have obtained possession of the suit property, when she was 16 years old and therefore, the Lower Appellate Court has pointed out that such a claim of the plaintiff is not believable. The Lower Appellate Court has also pointed out that the plaintiff has not produced any acceptable documents to prove her possession for 34 years. Further, the suit property has not been properly described with four boundaries. Hence, injunction cannot be granted as prayed for by the plaintiff.

12. Thus, it could be seen that both the Courts below have considered the entire evidence on record and recorded that the plaintiff has not proved her possession in the suit property. In a suit for injunction, unless the plaintiff proves her possession, she is not entitled to get injunction. Therefore, this Court while exercising power under Section 100 CPC, cannot re-appreciate the evidence and come to a different conclusion. A perusal of the judgment of the Courts below shows that both the courts below have carefully considered the oral and documentary evidence adduced by the parties and recorded a concurrent finding that the plaintiff has not proved her possession of the suit property for 34 years and accordingly, dismissed the suit. Hence, this Court finds no reason to interfere with such concurrent findings of fact. The above questions of law framed in the memorandum of grounds of second appeal in the considered view of this Court cannot be considered as substantial questions of law and except the above said submission, no other submission touching upon any substantial questions of law were advanced and this Court finds no reason to interfere with the judgment and decree of the courts below. Hence, the above second appeal fails and the same is dismissed. However there will be no order as to costs.

13. At this juncture, the learned counsel appearing for the appellant submitted that since the Courts below have made certain observations regarding the family arrangement pleaded by the plaintiff, unless such observations are deleted, it will affect the right of the plaintiff in seeking proper relief to declare her title towards the suit property.

14. In the decision reported in AIR 2007 Supreme Court 900 **(Ramji Rai and another v. Jagadish Mallah (Dead) through L.Rs. and another)**, the Apex Court has held that there can be a suit only for injunction and in a suit for bare injunction, if the plaintiffs have

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failed to show that they were in possession, the suit is liable to be dismissed and any observation regarding title of the plaintiff is unwarranted. Therefore, the above request of the counsel for the appellant has to be considered in the light of the above said observation of the Apex Court. Though the plaintiff has based her claim on the family arrangement pleaded, the suit has been dismissed mainly on the ground that the plaintiff has not proved her possession and as such the observations that have been made by the Courts below on the family arrangement will not stand in the way of the plaintiff seeking declaration of her title to the property before a competent court. With the above observation, the Second Appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Principal Subordinate Judge,
   Gopichettipalayam.

2. The District Munsif,
   Sathyamangalam.

S.A.No.983 of 2007

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